APPENDIX B

[TITLE OF COURT AND CAUSE]

JUDGMENT

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

(ENDORSED) Judgment
Filed and entered: July 27, 1956,
PAUL P. O'BRIEN, Clerk

APPENDIX C

[Trial of Court and Cause.]

Excerpt from Proceedings of Monday, July 23, 1956.

Before: STEPHENS, FEE AND CHAMBERS, Circuit, Judges.

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of Appellant, filed July 18, 1956, and within time allowed therefor by rule of Court for a rehearing of above cause be, and hereby is denied.

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 21 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-nine (69) pages, numbered from and including 1 to and including 69, to be a full, true and correct copy of the entire record, excluding original exhibits of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the Appellant, and certified under Rule 21 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 31st day of July, 1956.

PAUL P. O'BRIEN
PAUL P. O'BRIEN, Clerk.

APPENDIX D

CONSTITUTIONAL PROVISIONS INVOLVED

VIth Article (3rd Clause) of the Constitution

"... ; but no religious test shall ever be required as a qualification to any officer or public trust under the United States."

1st Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assembly, and to petition the Government for a redress of grievances."

STATUTES AND REGULATIONS INVOLVED

Section 1(c) of the Act.

Section 1(c) of the Universal Military Training and Service Act (50 U.S.C. App. (Supp. V) §451(c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625, title I, §1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, §1(a) 65 Stat. 75.

Section 6(j) of the Act

Section 6(j) of the Act (50 U.S.C. App. (Supp. V) §456(j), 65 Stat. 75, 83, 86) provides:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in Section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title, to have knowingly failed or neglected to perform a duty required

of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in Section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Depart of Justice finds that his objections are not

sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be found to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."—50 U.S.C. App. (Supp. V) §456(j), 65 Stat. 75, 83, 86.

Section 12(a) of the Act

Section 12(a) of the Act (50 U.S.C. App. (Supp. B) §462(a)) provides:

". . . Any . . . person . . . who . . . refuses . . . service in the armed forces . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . ."

Section 1626.25 of the Selective Service Regulations (32 C.F.R. §1626.25 (1951 Rev.)) provides:

"*Special Provisions When Appeal Involves Claim That Registrant Is a Conscientious Objector.* — (a) If an appeal involves the question

whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

"(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to combatant training and service in the armed forces, but not conscientiously opposed to noncombatant training and service in the armed forces, the appeal board shall first determine whether or not such registrant is eligible for classification in a class lower than Class I-A-O. If the appeal board determines that such registrant is eligible for classification in a class lower than I-A-O, it shall classify the registrant in that class. If the appeal board determines that such registrant is not eligible for classification in a class lower than Class I-A-O, but is eligible for classification in Class I-A-O, it shall classify the registrant in that case.

"(2) If the appeal board determines that such registrant is not eligible for classification in either a class lower than Class I-A-O or in Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(3) If the registrant claims that he is, by reason of religious training and belief, conscientiously opposed to participation in war in any

form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, the appeal board shall first determine whether or not the registrant is eligible for classification in a class lower than Class I-O. If the appeal board finds that the registrant is not eligible for classification in a class lower than Class I-O, but does find that the registrant is eligible for classification in Class I-O, it shall place him in that class.

"(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) No registrant's file shall be forwarded to the United States Attorney by any appeal board and any file so forwarded shall be returned, unless in the 'Minutes of Action by Local Board and Appeal Board' on the Classification Questionnaire (SSS Form No. 100) the record shows and the letter of transmittal states that the appeal board reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O under the circumstances set forth in subparagraphs (2) or (4) of paragraph (a) of this section.

"(c) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall

be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be found to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant both the letter containing the recommendation of the Department of Justice and the report of the Hearing Officer of the Department of Justice."

Section 1626.26 of the Regulations

Section 1626.26 of the Selective Service Regulations (32 C.F.R. §1626.26 (1951 Rev.)) provides:

"*Decision of Appeal Board.*—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

"(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; provided, that it shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter."

ARMY REGULATION

S. R. 615-180-1

"Processing registrants in special categories.

. . .

"b. *Registrants who refuse to submit to induction.*—Any registrant removed from the group as prescribed in paragraph 23, and who persists in his refusal to submit to induction, will be informed that such refusal constitutes a felony under the provision of the Selective Service Regulations. He will be informed further that conviction of such an offense under civil proceedings will subject him to be punished by imprisonment for not more than 5 years, or a fine of not more

than $10,000, or both. He will then be informed again of the imminence of induction using the language specified in paragraph 23a, and his name and service again will be called. If he steps forward at this time, he will be informed that he is a member of the armed service concerned, using the language specified in paragraph 23b. If, however, he persists in refusing to be inducted, the following action will be taken:

"(1) The registrant will be requested, but not required, to make a signed statement, dated, in his own handwriting, as follows: 'I refuse to be inducted into the Armed Services of the United States.' Such statement should be witnessed by at least two witnesses who shall affix their signatures to the statement. Registrants who refuse induction will not be furnished any means of transportation."